

# **MICHIGAN CORPORATION AND SECURITIES BUREAU**

## **RELEASE NO. 95-1-S**

TO: ALL INTERESTED PARTIES

SUBJECT: Section 402(b)(17)

### General Background:

This release replaces Release No. 84-26 which dealt with Section 402(b)(17) of the Michigan Uniform Securities Act, 1964 PA 265 (the "Act").

Effective November 30, 1990, Section 402(b)(17) was amended to provide a transactional exemption for "any nonissuer transaction effected by or through a broker-dealer in any outstanding security of the same class as that which has been designated by order by the administrator as eligible for trading in this state...."

The purpose of this release is to inform all interested persons of the Bureau's construction of Section 402(b)(17).

### Action and Interpretation:

Section 305(h) provides "every registration statement is effective for one year from its effective date, except during the time a stop order is in effect under Section 306 . . . . All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction so long as the registration statement is effective or the issuer has a class of securities that have been subject to the reporting requirements of Section 13 or 15(d) of Title I of the Securities Exchange Act of 1934 . . . for not less than nine months before the transaction and all reports required by that act have been filed for that period. . . ."

As a consequence of Section 305(h), securities which are registered in Michigan will be eligible for any nonissuer transaction for one year from their effective date and so long as the issuer has a class of securities subject to Section 13 or 15(d) of the Securities Exchange Act of 1934 and has filed all required reports. A Designation Order pursuant to Section 402(b)(17) will not be necessary for such outstanding securities.

For offerings not registered in Michigan, the Bureau will designate securities as eligible for trading in this state by order if (1) the security is sold, at the time the order is requested, at a price of at least \$5, (2) the security has been publicly traded for a period in excess of one year, and (3) the issuer is required by the provisions of Section 12(g) of the Securities Exchange Act of 1934 to register pursuant to that section. Issuers not meeting all three of these criteria will be dealt with on a case-by-case basis.

**Release No. 95-1-S**  
**Page Two**

For offerings not registered in Michigan, the Bureau has established two additional criteria. First, the applicant should provide monthly trading reports for the company's securities for 90 days prior to the request for a Designation Order. The Bureau will require the price of the securities to be maintained at a minimum of \$5 for each day of such 90 day period. Second, the applicant should provide the names of the company's market makers. If a company has a very low trading volume or if the market makers have had enforcement problems, this may constitute grounds for denying a request for a Designation Order. This will be handled on a case-by-case basis.

The applicant for a Designation Order should also submit a copy of the Issuer's most recent 10-K's and 10-Q's. In addition, it should be noted that the Bureau will not issue a Designation Order for the securities of any issuer who has withdrawn a registration application within one year of the application for a Designation Order. The Bureau will not allow Section 402(b)(17) to be used as a means to evade registration under the Act.

Authority:

Act 265 of 1964, Section 413(f).

Signed by Carl L. Tyson, Director  
Corporation and Securities Bureau

Dated: April 4, 1995